

DEPARTMENT OF TRANSPORTATION

**DEPARTMENT'S POSITION PAPER FOR
DISPUTES REVIEW BOARD**

04-0120R4

Notice of Potential Claim No. 1
Steel price escalation

DRB hearing
March 14, 2005

Resident Engineer: **Lourdes David**
Contractor: **CC Meyers**

I. Background

This contract provides for a temporary detour structure on the eastern side of Yerba Buena Island that will allow for demolition and reconstruction of the new East span of the San Francisco-Oakland Bay Bridge.

II. Description of Dispute

The price of steel materials began a steep increase in late 2003, continuing into 2004. The Contract terms do not include language to adjust contract prices for changing market conditions. One month after the contract award date, the Contractor, CC Meyers, requested that the Department provide a contract change order to allow for an adjustment in compensation for continually changing market conditions in the steel industry.

III. Description of Events in Chronological Order

12/3/03	Contract bid open.
1/28/04	Letter to extend contract award through 2/27/04 (accepted by CCM).
2/26/04	Letter to extend contract award through 3/12/04 (accepted by CCM).
3/10/04	Contract award.
4/07/04	Contractor request for contract change due to steel market conditions.
6/4/04	Department denies change request.
6/22/04	NOPC #1 filed for the Department's refusal to change the contract.
7/7/04	NOPC #1 supplemental received.
7/26/04	Department request for contractual basis for NOPC #1.
8/9/04	Contractor supplies additional arguments for position.
8/27/04	Department finds no merit to NOPC #1.

IV. The Department's Understanding of the Contractor's Position

One month after contract award, CC Meyers requested that the Department provide a contract change order to allow for an adjustment in compensation for continually changing market conditions in the steel industry.

Claimed Amount: \$1,576,000

Claimed Time Extension: 0 working days

V. The Department's Position

The Contractor is not entitled to arbitrarily change the terms of contract compensation, nor is the Department legally authorized to do so. The Contractor has failed to cite contract terms or legal precedent that would entitle this kind of a change. Further the Contractor had two opportunities to withdraw the bid or otherwise notify the Department that there was a problem with the bid prices, at a time the steel price increases were known to be occurring, but the contractor failed to do so.

CC Meyers Inc. executed a contract with the Department on 3/10/04(Attachment 01). The contract is for CC Meyers to perform the work specified in the contract documents for a specified bid price. Article I of the executed Contract documents contains contract language that states that the Contractor agrees to do the work:

“That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said party of the first part... the said party of the second part agrees with the said party of the first part, **at his own proper cost and expense, to do all the work and furnish all the materials...necessary to construct and complete in a good, workmanlike and substantial manner and to the satisfaction of the Department of Transportation, the work** described in the special provisions and the project plans described below, including any addenda thereto, and also in conformance with the Department of Transportation Standard Plans, dated July 1999, the Standard Specifications, dated July, 1999, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished, which said special provisions, project plans, Standard Plans, Standard Specifications, and Labor Surcharge and Equipment Rental Rates are hereby specially referred to and by such reference made a part hereof.”(emphasis added)

Article V contains the language that says the Contractor agrees to do the work for the prices bid, and is immediately followed by the bid prices (see attachment 1):

“And the **said Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials** and for doing all the work contemplated and embraced in this agreement; also for all loss or damage, arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the Department of

Transportation, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and specifications, and the requirements of the Engineer under them..."(emphasis added)

The language of the Contract is repeated in Standard Specification section 9-1.02:

"The Contractor shall accept the compensation provided in the contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the contract; also ... from any unforeseen difficulties which may be encountered during the prosecution of the work until the acceptance by the Director and for all risks of every description connected with the prosecution of the work, also ... for completing the work according to the plans and specifications. ...

"No compensation will be made in any case for loss of anticipated profits."

The above three contract excerpts expressly state that the Contractor agrees to do the work for the prices bid, to which the Contractor agreed by executing the contract. Upon execution, the Department is prohibited from changing these contract payment terms by Article 4, Section 17 of the California State Constitution. The Legislature is the body that allocates money and grants the legal authority to the Department to write contracts. This section provides the limits of the Legislature's, and therefore the Department's, legal authority to change the terms of a contract:

"The Legislature has **no power to grant, or to authorize a city, county, or other public body to grant, extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part**, or to authorize the payment of a claim against the State or a city, county, or other public body under an agreement made without authority of law." (emphasis added)

The Contractor had two opportunities prior to contract award and execution to notify the Department that the contract bid prices were no longer valid. After contract bid opening, the Department requested permission from the Contractor to extend the award period and bid prices (Attachment 02, 03). On both occasions, the Contractor accepted the award extension with no conditions. In accepting the extension, the Contractor had a duty to be sure that both it and its subcontractors accepted the contract bid price extension. As shown by graphs included with the Contractors letter 215-STL.00002 dated April 7, 2004(Attachment 04), it is during this same time period that the materials prices started to climb. By waiting until after contract award and execution, the request to change the terms of the contract is untimely.

The Contractor has further failed to provide a contractual basis for changing the terms of the contract. In their letter 215-STL.00018, dated August 9, 2004(Attachment 05), the Contractor acknowledges that the specifications do not provide a basis to substantiate

their request for a change to the contract. However, the letter fails to note that the Contract does contemplate materials price increases and shortage of materials. An excusable delay may be granted if certain conditions exist by Standard Specification section 8-1.07:

“The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in the special provisions for the completion of the work caused by acts of God or of the public enemy, fire, floods, tsunamis, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes **shortage of materials** and freight embargoes, **provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of that delay.** The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

No extension of time will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Engineer documentary proof that the Contractor has made every effort to obtain the materials from all known sources within reasonable reach of the work in a diligent and timely manner, and further proof in the form of supplementary progress schedules, as required in Section 8-1.04, "Progress Schedule," that the inability to obtain the materials when originally planned, did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations. The term "shortage of materials," as used in this section, shall apply only to materials, articles, parts or equipment which are standard items and are to be incorporated in the work. The term "shortage of materials," shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the contract. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials.” (emphasis added)

As such, the contract does not explicitly allow a price adjustment when market conditions change. The Contractor has not requested extra time in accordance with this specification; although the supplemental NOPC dated July 7, 2004(Attachment 06) notes that delays are being experienced.

Instead, in the same August letter, the Contractor likened steel market instability to a new and unusual situation similar to Standard Specification section 7-1.165 “Damage by Storm, Flood, Tsunami or Earthquake.” It is the Department’s position that this specification does not apply to the current dispute, and does not entitle the Contractor to a change in the contract that allows a price different from the contractor’s bid. This specification specifically applies to occurrences, including tsunamis, earthquakes, storms floods, and other natural disasters, and in those situations merely caps the liability for damages incurred. It does not apply to market instability, nor does it authorize bid price adjustments.

In the August letter, the Contractor referred to a specification such as has been provided in other contracts that allow adjustments made for asphalt oil price changes. It is the Department's position that while such a specification could have been provided in the contract, it was not, and to add it after contract bid opening not only violates the Department's legal contracting authority, but it also exposes the Department to liability for damages to the unsuccessful bidders for this contract because it relieves the low bidder of a risk that should be currently accounted for in the bid price. The unsuccessful bidders would not be afforded a similar opportunity to base their bid on the same contract terms.

The Contractor has referred to the contracting actions of other state governments. Not only are the actions of other states irrelevant to this contract, those contract terms were provided in the bid packages, not post contract award, and it is further noted that a number of states have withdrawn the use of those provisions.

Finally, in the Contractor's initial Notice of Potential Claim, dated June 6, 2004(Attachment 07), it is noted that several contractors make several additional unfounded arguments. The Notice of Potential Claim upon which this dispute is centered is not preceded by any action by the Department which could be construed as a cardinal change or breach of contract. It is possible to perform the work of procuring the steel, as evidenced by the fact that the Contractor now has much of the steel on hand. In accepting the extension, the Contractor had a duty to be sure that both it and its subcontractors accepted the contract bid price extension. By waiting until after contract award and execution, the request to change the terms of the contract is untimely.

VI. Conclusion

CC Meyers Inc. executed a contract with the Department on 3/10/04. CC Meyers must perform the work it promised to do for the price it promised, and is not therefore entitled to renegotiate the terms of its compensation. The Contractor has failed to cite contract terms or legal precedent that would entitle this kind of a change. Adding a contract term for compensation for market price instability is not permitted by this contract and state law, and would unfairly relieve the Contractor of risk assigned by the contract.

Further the Contractor had two opportunities to withdraw the bid, at a time the steel price increases were known to be occurring, and did not.

It is for these reasons that the Department asks the Disputes Review Board to find no merit to this Notice of Potential Claim.

VII. Supporting Attachments

Attachment 01 – Executed Contract

Attachment 02 – Contract award period extension request dated January 28, 2004

Attachment 03 – Contract award period extension request dated February 26, 2004

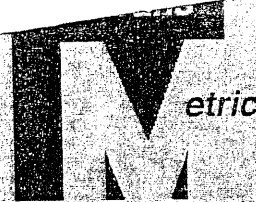
Attachment 04 – Contractor letter 215-STL.00002 dated April 7, 2004

Attachment 05 – Contractor letter 215-STL.00018, dated August 9, 2004

Attachment 06 – Supplemental NOPC dated July 7, 2004

Attachment 07 – Initial NOPC dated June 6, 2004

Attachment 08 – State response letters to Contractor letters and transmittals



STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

**EXECUTION
OF
CONTRACT**
FOR CONSTRUCTION ON
STATE HIGHWAY
IN

THE CITY AND COUNTY OF SAN FRANCISCO FROM
YERBA BUENA TUNNEL TO 0.6 KM EAST OF THE YERBA
BUENA TUNNEL

DISTRICT 04 ROUTE 80

For use in Connection with Standard Specifications Dated July 99, Standard
Plans Dated July 99, and Labor Surcharge and Equipment Rental Rates.

Contract No. 04-0120R4

04-SF-80-12.6/13.2

ACBRIM-080-1(097)N

Bids Open: December 2, 2003

BIDDERS PLEASE NOTE

Bid Summaries available at:
<http://www.dot.ca.gov/hq/esc/oe/>

CC MEMBERS
Please return Contracts Within
10 Days to:

Department of Transportation
Attn: Office Engineer MS 43
1727 30th Street
Sacramento CA 95816



STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

CONTRACT NO. 04-0120R4

THIS AGREEMENT, made and concluded, in duplicate, **MAR 10 2004**
between the State of California, by the Department of Transportation thereof, party of the first part, and

C C MYERS INC

3286 FITZGERALD ROAD

RANCHO CORDOVA CA 957426811

License: 331359

Class: A

Phone: (916)635-9370

Contractor, party of the second part.

ARTICLE I.-- WITNESSETH, That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said party of the first part, and under the conditions expressed in the 2 bonds, bearing even date with these presents, and hereunto annexed, the said party of the second part agrees with the said party of the first part, at his own proper cost and expense, to do all the work and furnish all the materials, except such as are mentioned in the specifications to be furnished by said party of the first part, necessary to construct and complete in a good, workmanlike and substantial manner and to the satisfaction of the Department of Transportation, the work described in the special provisions and the project plans described below, including any addenda thereto, and also in accordance with the Department of Transportation Standard Plans, dated July, 1999, the Standard Specifications, dated July, 1999, and the Labor Surcharge And Equipment Rental Rates in effect on the date the work is accomplished, which said special provisions, project plans, Standard Plans, Standard Specifications, and Labor Surcharge And Equipment Rental Rates are hereby specially referred to and by such reference made a part hereof.

The special provisions for the work to be done are dated April 14,2003 and are entitled:

STATE OF CALIFORNIA; DEPARTMENT OF TRANSPORTATION; NOTICE TO CONTRACTORS AND SPECIAL PROVISIONS FOR CONSTRUCTION ON STATE HIGHWAY IN THE CITY AND COUNTY OF SAN FRANCISCO FROM YERBA BUENA TUNNEL TO 0.6 KM EAST OF THE YERBA BUENA TUNNEL

The project plans for the work to be done were approved March 31,2003 and are entitled:

STATE OF CALIFORNIA; DEPARTMENT OF TRANSPORTATION; PROJECT PLANS FOR CONSTRUCTION ON STATE HIGHWAY IN THE CITY AND COUNTY OF SAN FRANCISCO FROM YERBA BUENA TUNNEL TO 0.6 KM EAST OF THE YERBA BUENA TUNNEL

Type of Work: CONSTRUCT ROUTE 80 TEMPORARY BYPASS STRUCTURE

ARTICLE II.-- The said party of the first part hereby promises and agrees with the said Contractor to employ, and does hereby employ, the said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices hereinafter set forth, and hereby contracts to pay the same at the time, in the manner and upon the conditions herein set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III.-- The statement of prevailing wages appearing in the General Prevailing Wage Rates is hereby specifically referred to and by this reference is made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE IV.-- By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ARTICLE V.-- And the said Contractor agrees to receive and accept the following price or prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage, arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the Department of Transportation, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and special provisions, and the requirements of the Engineer under them, to wit:

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	BID	AMOUNT
1	031072	ELECTRONIC MOBILE DAILY DIARY COMPUTER SYSTEM DATA DELIVERY	LS	LUMP SUM	20,000.00*	20,000.00
2	031073	CONSTRUCTION SURVEYING	LS	LUMP SUM	150,000.00*	150,000.00
3	031074	PHOTO SURVEY OF EXISTING FACILITIES	LS	LUMP SUM	1.00*	1.00
4	031075	TURBIDITY CONTROL	LS	LUMP SUM	1.00*	1.00
5	031146	VIBRATION MONITORING	LS	LUMP SUM	50,000.00*	50,000.00
6	000001	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	0.00	0.00
7	070012	PROGRESS SCHEDULE (CRITICAL PATH METHOD) TIME-RELATED OVERHEAD	LS	LUMP SUM	15,000.00*	15,000.00
8	070018	TEMPORARY FENCE (TYPE ESA)	LS	LUMP SUM	6,000,000.00*	6,000,000.00
9 (S)	071325	TEMPORARY FENCE (TYPE ESA)	M	730	15.00	10,950.00
10	049372	TEMPORARY BYPASS STRUCTURE, EAST TIE-IN	LS	LUMP SUM	6,000,000.00*	6,000,000.00
11	049373	TEMPORARY BYPASS STRUCTURE, VIADUCT	LS	LUMP SUM	26,740,000.00*	26,740,000.00
12	049374	TEMPORARY BYPASS STRUCTURE, WEST TIE-IN	LS	LUMP SUM	9,000,000.00*	9,000,000.00
13 (S)	031087	CONTRACTOR DESIGN	LS	LUMP SUM	5,000,000.00*	5,000,000.00
14 (S)	074019	PREPARE STORM WATER POLLUTION PREVENTION PLAN	LS	LUMP SUM	10,000.00*	10,000.00
15 (S)	074020	WATER POLLUTION CONTROL	LS	LUMP SUM	200,000.00*	200,000.00
16 (S)	074025	TEMPORARY SOIL STABILIZER	M2	17,900	1.00	17,900.00
17 (S)	074029	TEMPORARY SILT FENCE	M	1,070	12.00	12,840.00
18 (S)	031077	TEMPORARY PERIMETER CONTROL BARRIER	M	160	165.00	26,400.00
19 (S)	074032	TEMPORARY CONCRETE WASHOUT FACILITY	LS	LUMP SUM	15,000.00*	15,000.00
20 (S)	074033	TEMPORARY CONSTRUCTION ENTRANCE	EA	6	3,000.00	18,000.00
21 (S)	074034	TEMPORARY COVER	M2	5,000	5.00	25,000.00
22 (S)	031078	TEMPORARY DRAINAGE INLET PROTECTION	EA	42	300.00	12,600.00
23 (S)	031079	STABILIZED CONSTRUCTION ROADWAY	M3	1,990	15.00	29,850.00
24	120090	CONSTRUCTION AREA SIGNS	LS	LUMP SUM	20,000.00*	20,000.00
25 (S)	120100	TRAFFIC CONTROL SYSTEM	LS	LUMP SUM	500,000.00*	500,000.00
26	000011	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	0.00	0.00
27 (S)	120159	TEMPORARY TRAFFIC STRIPE (PAINT)	M	7,830	2.50	19,575.00
28 (S)	120165	CHANNELIZER (SURFACE MOUNTED)	EA	70	25.00	1,750.00
29 (S)	120166	CHANNELIZER (SURFACE MOUNTED) (LEFT IN PLACE)	EA	40	25.00	1,000.00
30 (S)	120300	TEMPORARY PAVEMENT MARKER	EA	1,750	3.00	5,250.00
31 (S)	031080	TEMPORARY PERIMETER FENCE (TYPE WM-1.8)	M	390	30.00	11,700.00
32 (S)	128650	PORTABLE CHANGEABLE MESSAGE SIGN	EA	49	5,000.00	245,000.00
33	129000	TEMPORARY RAILING (TYPE K)	M	730	75.00	54,750.00
34	129100	TEMPORARY CRASH CUSHION MODULE	EA	14	350.00	4,900.00
35	031081	TEMPORARY CRASH CUSHION (ADJEM)	EA	3	7,000.00	21,000.00

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	BID	AMOUNT
36	150662	REMOVE METAL BEAM GUARD RAILING	M	12	35.00	420.00
37 (S)	150714	REMOVE THERMOPLASTIC TRAFFIC STRIPE	M	4,095	3.00	12,285.00
38	152386	RELOCATE ROADSIDE SIGN-ONE POST	EA	3	200.00	600.00
39	156585	REMOVE CRASH CUSHION	EA	1	1,200.00	1,200.00
40 (S)	157550	BRIDGE REMOVAL	LS	LUMP SUM	3,500,000.00*	3,500,000.00
41 (S)	157561	BRIDGE REMOVAL (PORTION), LOCATION A	LS	LUMP SUM	1,410,000.00*	1,410,000.00
42 (S)	157562	BRIDGE REMOVAL (PORTION), LOCATION B	LS	LUMP SUM	1,460,000.00*	1,460,000.00
43	160101	CLEARING AND GRUBBING	LS	LUMP SUM	70,000.00*	70,000.00
44	190101	ROADWAY EXCAVATION	M3	2,713	60.00	162,780.00
45	031082	ROADWAY EXCAVATION	M3	800	305.00	244,000.00
46 (S)	031083	(BRIDGE REMOVAL) (HAZARDOUS)	M2	5,220	5.50	28,710.00
47 (S)	203003	EROSION CONTROL (NETTING)	TONN	5.2	425.00	2,210.00
48 (S)	203014	STRAW (EROSION CONTROL)	KG	1,490	1.00	1,490.00
49 (S)	031084	FIBER (EROSION CONTROL)	M2	2,150	5.00	10,750.00
50 (S)	203021	EROSION CONTROL (TYPE B)	M	1,520	15.00	22,800.00
51 (S)	203021	FIBER ROLLS	KG	4,510	1.00	4,510.00
52 (S)	203024	COMPOST (EROSION CONTROL)	EA	7	1,000.00	7,000.00
53 (S)	203026	MOVE-IN/MOVE-OUT (EROSION CONTROL)	KG	280	55.00	15,400.00
54 (S)	203045	PURE LIVE SEED (EROSION CONTROL)	KG	340	3.50	1,190.00
55	220101	STABILIZING EMULSION (EROSION CONTROL)	LS	LUMP SUM	25,000.00*	25,000.00
56	000004	FINISHING ROADWAY	LS	LUMP SUM	.00*	0.00
57	000005	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
58	000006	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
59	401108	REPLACE CONCRETE PAVEMENT (RAPID STRENGTH CONCRETE)	M3	212	600.00	127,200.00
60	000002	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
61	566011	ROADSIDE SIGN - ONE POST	EA	9	250.00	2,250.00
62	000006	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
63 (S)	800391	CHAIN LINK FENCE (TYPE CL-1.8)	M	21	105.00	2,205.00
64 (S)	800394	CHAIN LINK FENCE (TYPE CL-1.8, EXTENSION ARM)	M	70	70.00	4,900.00
65 (S)	802592	2.4 M CHAIN LINK GATE (TYPE CL-1.8)	EA	4	900.00	3,600.00
66	820107	DELINEATOR (CLASS 1)	EA	11	40.00	440.00
67	820134	OBJECT MARKER (TYPE P)	EA	3	100.00	300.00
68	833080	CONCRETE BARRIER (TYPE K)	M	560	75.00	42,000.00
69 (S)	839603	CRASH CUSHION (ADIEM)	EA	2	18,000.00	36,000.00
70 (S)	840515	THERMOPLASTIC PAVEMENT MARKING	M2	30	50.00	1,500.00

ITEM NO.	ITEM CODE	ITEM DESCRIPTION	UNIT OF MEASURE	ESTIMATED QUANTITY	BID	AMOUNT
71 (S)	840561	100 MM THERMOPLASTIC TRAFFIC STRIPE	M	3,676	2.50	9,190.00
72 (S)	840563	200 MM THERMOPLASTIC TRAFFIC STRIPE	M	380	5.00	1,900.00
73	000012	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
74 (S)	031088	100 MM THERMOPLASTIC TRAFFIC STRIPE (BROKEN 4.57 M-2.74 M)	M	6,268	1.75	10,969.00
75 (S)	850101	PAVEMENT MARKER (NON-REFLECTIVE)	EA	2,571	2.00	5,142.00
76 (S)	850102	PAVEMENT MARKER (REFLECTIVE)	EA	1,068	3.50	3,738.00
77	000003	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
78 (S)	031090	ELECTRICAL WORK (STAGE 2)	LS	LUMP SUM	1,000,000.00*	1,000,000.00
79 (S)	031091	300 MM WATER MAIN	M	73	450.00	32,850.00
80 (S)	031092	100 MM WATER LINE	M	74	350.00	25,900.00
81 (S)	031093	12 NPS WATER MAIN (TEMPORARY BYPASS STRUCTURE)	M	410	900.00	369,000.00
82 (S)	031094	4 NPS WATER LINE (TEMPORARY BYPASS STRUCTURE)	M	410	560.00	229,600.00
83	000004	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
84	031695	SEWER VIDEO SURVEY	LS	LUMP SUM	15,000.00*	15,000.00
85	000008	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
86	153151	COLD PLANE ASPHALT CONCRETE PAVEMENT (25 MM MAXIMUM)	M2	1,153	18.00	20,754.00
87	390102	ASPHALT CONCRETE (TYPE A)	TONN	2,200	100.00	220,000.00
88	000009	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
89	120140	BARRICADE (LEFT IN PLACE)	EA	4	125.00	500.00
90	032009	SOUTH EDGE GIRDER SUPPORT	LS	LUMP SUM	625,000.00*	625,000.00
91	032010	DRAINAGE FACILITIES	LS	LUMP SUM	50,000.00*	50,000.00
92	000010	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
93	032071	RECONSTRUCT SOUTHGATE ROAD	LS	LUMP SUM	100,000.00*	100,000.00
94	000013	ITEM DELETED PER ADDENDUM	LS	LUMP SUM	.00*	0.00
95	568001	INSTALL SIGN (STRAP AND SADDLE BRACKET METHOD)	EA	6	150.00	900.00
96	999990	MOBILIZATION	LS	LUMP SUM	7,000,000.00*	7,000,000.00
					A)	71,159,650.00
					B)	475 DAYS X 16000
					A+B)	78,759,650.00

IN WITNESS WHEREOF, The parties to these presents have hereunto set their hands the year and date first above written

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

JEFF MORALES
Director of Transportation

Rebecca D. Harnagel

C C MYERS INC

NOTE: Contractor acknowledges changes to the contract included in 14 addenda.

By [Signature]
Contractor's Signature C. C. Myers, CEO & Chairman of the Board

Licensed in accordance with an act
providing for the registration of
Contractors,

License No. 331359

Federal Employer Identification

Number 94-2399946

Approved and certified as being in accordance with the requirements of the State Contract Act.

[Signature]
Attorney, Department of Transportation

Approved Effective MAR 25 2004



JAN 28 2004 2:38PM CALIFORNIA HIGHWAYS DEPARTMENT OF TRANSPORTATION

NO. 80095.1 P. 1001/001

DEPARTMENT OF TRANSPORTATION, ENGINEERING DIVISION

ADMINISTRATIVE SERVICES DIVISION



DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER, MS 43

1727 30TH STREET

SACRAMENTO, CA 95816

P.O. BOX 168041

SACRAMENTO, CA 95816-8041

PHONE (916) 227-4300

FAX (916) 227-6151

TTY (916) 227-8454

*File your power!
Be energy efficient!*

January 28, 2004

Post-IT Fax Note 7671		Date	1/28/04
To	C.C. Myers Inc.	From	Kris Kuhl
Co./Dept.		Co.	Transportation
Phone #		Phone #	(916) 227-6280
Fax #	(916) 635-1527	Fax #	(916) 227-6282

C. C. Myers, Inc.
P. O. Box 2948
Rancho Cordova, CA 95741
(916) 635-1527

Dear Contractor:

We request that you agree to extend the award period for your bid on contract 04-0120R4 through February 27, 2004. We are still awaiting completion of the determination of the low bidder's good faith efforts. Therefore, additional time is necessary for completion of administrative requirements for award of the contract. Please sign the concurrence line below and return fax this letter to us at (916) 227-6282. Questions may be directed to Kris Kuhl at (916) 227-6280.

Sincerely,

Kris Kuhl
KRIS KUHL

Chief, Office of Contract Awards and Services
Office Engineer

Contract # 04-0120R4

Bid Opening: 12/2/03

I concur in an extension of the award period for this contract to February 27, 2004.

George C. Delano
Signature of Company Officer

George C. Delano Manager, Estimating/Engineering
Print Name and Title of Company Officer

"Caltrans improves mobility across California"

RECEIVED TIME JAN. 28. 4:12PM

PRINT TIME JAN. 28. 4:12PM

**C.C. MYERS INC.**

January 29, 2004

State of California
Department of Transportation
Division of Engineering Services
Office Engineer, MS 43
1727 30th Street
Sacramento, CA 95816

Attn: Mr. Kris Kuhl
Chief, Office of Contract Awards and Services

Re: 04-0120R4 Bay Bridge Temporary Bypass Structure
Extension of Contract Award Period

Dear Mr. Kuhl,

We have received your letter of January 28th requesting that we agree to an extension of the award period on this contract. Attached is a copy of your letter with our signature concurring with the extension of the award period through February 27, 2004.

Very truly yours,
C. C. Myers, Inc


George C. Delano, P.E.
Manager, Estimating/Engineering

cc: S Crozier
D Himick

File: 216

FEB 26 2004 11:23AM

C C MYERS

NO. 8449

P. 1

FEB 26 2004 12:17

CALTRANS CONTRACT AWARDS - 9151032532

NO. 254 FEB 26/04

DEPARTMENT OF TRANSPORTATION

ARACOLD, BIRMINGHAM, ALABAMA

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER M943

1727 - 30TH STREET

SACRAMENTO, CA 95816

P.O. BOX 166041

SACRAMENTO, CA 95816-6041

PHONE (916) 227-6300



Max your power!
Be energy efficient!

February 26, 2004

TO:
ELEANOR
SMITH

C C Myers Inc

P O Box 2948

Rancho Cordova, CA 95741

916-635-1527

Dear Contractor,

We request that you agree to extend the award period for your bid on contract 04-0120R4 through March 12, 2004. The current time period allotted for award will expire on February 26, 2004; however, the Federal Highways Administration must grant concurrence to award this project. In addition, we are waiting for expenditure authorization from Caltrans' Accounting Division; therefore, additional time is necessary for completion of administrative requirements for award. Please sign the concurrence line below and return fax this letter to us at (916) 227-6282. Questions may be directed to Kels Kuhl at (916) 227-6280.

Eleanor Smith

ELEANOR SMITH
for Office Engineer

Contract #: 04-0120R4
Bid Opening: 12/02/03

I concur in an extension of the award period for this contract to March 12, 2004.

Signature of Company Officer

Daniel E. Humick, PRESIDENT

Print name and Title of Company Officer

FAX TRANSMITTAL

of pages = 1

TO: C C Myers Inc

FROM: Caltrans

Fax # 916-635-1527

Fax # 916 227-6282

RECEIVED DATE : 02/26/04 10:53 FROM : 916 2276282



CC MYERS INC.

04/07/2004

Document No.: 215-STL.00002

State of California
Department of Transportation
333 Berna Road
Oakland, CA 94607

Temporary Bypass Structure
Contract No. 04-0120R4
CCM Job # 215

Attn: Mr. Kenneth Loncharich
Resident Engineer

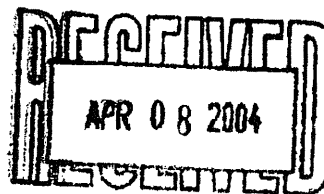
Re: Steel Raw Material Market Conditions

Dear Mr. Loncharich,

The market for steel raw materials has become extremely unstable over the recent months. Prices for raw material for structural steel, concrete reinforcing steel and other steel products have become unstable and unpredictable due to influences outside the industry's control. Increases have occurred in the most recent fiscal quarter as much as eighteen percent. Attached are some graphs showing the trend in price for structural steel and reinforcing steel. It can be determined from these graphs that the prices for structural steel had leveled out after a downward trend late in 2003 followed by a spike in the most recent quarter. For reinforcing steel, the trend indicated a steady increase in price throughout 2003 with an upturn and sudden spike in the most recent quarter. These conditions are not localized to this project or even State, but are occurring worldwide.

This market volatility is affecting many aspects of our project. We are experiencing increases in the cost of raw materials for all steel products, including piles, casings, structural steel, prestressing steel and reinforcing steel. The structural steel influence also affects the procurement of our column forms and falsework material for the project.

As this is an industry wide problem and not specific to this project, we request that the State provide a Contract Change Order to allow for an adjustment in compensation due to the continually changing conditions in the steel industry. The Utah Department of Transportation has recently adopted a program for protecting both themselves and their contractors from such volatile market conditions. Attached for your use is a copy of an addendum issued for one of their currently advertised projects for bid, discussing how the Department will deal with this situation with the establishment of an indexed adjustment. This is a similar concept to how Caltrans currently handles the asphalt oil price fluctuations. We request that you consider this matter as the impacts are being caused by influences beyond the control of either Caltrans or C. C. Myers, Inc. and as the State received the benefit of the previously stable market by virtue of the prices used in compiling our bid for this project.



000794

April 7, 2004
State of California
Department of Transportation
Mr. Kenneth Loncharich
215-STL.00002
Page 2

Please review the attached information and advise us how you wish to proceed. Documentation of the conditions described herein is widespread. The graphs attached were obtained from the March 22, 2004, issue of Engineering News Record. Please let us know if there is any further information that we can provide to assist you in evaluating this matter.

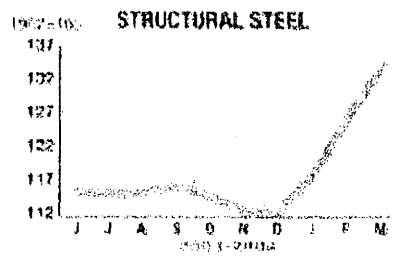
Very Truly Yours,
C. C. MYERS, INC.

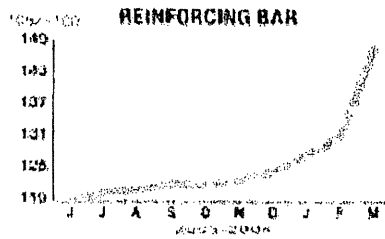


Robert W. Coupe
Project Manager

cc: MO, DH, BK

File: 215-101, 215-9901





CLOSE WINDOW

March 2, 2004

SR-201 Design Build Project
SP-0201(5)13

RFP Addendum #6

TO ALL DESIGN-BUILDERS SHORTLISTED FOR THE SR-201 DESIGN-BUILD
PROJECT:

The Request for Proposals is hereby modified as follows:

1. RFP Chapter 123: Add the attached electronic copy of Section 2.10.12 "Price Adjustment for Steel Materials". Please note that the threshold for price adjustment has changed from the value that was indicated in the draft which was circulated late last week.
2. Appendix E, Form 1: Delete the hard and electronic copies of Form 1 and replace with the attached electronic copy.

The above noted changes do not require each Design-Builder to pick up anything at my office.

Sincerely,

Lisa Wilson
UDOT Project Manager

UTAH DEPARTMENT OF TRANSPORTATION - SR 201 DESIGN-BUILD

2.10.12 PRICE ADJUSTMENT FOR STEEL MATERIALS

- A. Recent rapid price escalation in the steel industry has created uncertainty among contractors and suppliers regarding future price predictability. This price adjustment provision provides a mechanism to share the risk between the Department and the Design-Builder related to this potential for price fluctuations throughout the duration of the Contract. The Department increases or decreases the Lump Sum Contract amount with the Design-Builder as described herein.
- B. Department adjusts the price of steel materials for the following materials only, defined as the "Indexed Items":
1. Steel Girders (including structural bolts, metal attachments, and structural steel in sign supports)
 2. Concrete Reinforcing Rebar
 3. Steel Piling
- C. The Benchmark Index (BI) for each of the above is the Bureau of Labor Statistics (BLS), Producer Price Indexes (PPI), February 2004, determined from data published 4 months after initial publication (June 2004), as follows. Do not use seasonally adjusted indexes.
(See also <http://data.bls.gov/labjava/outside.jsp?survey=wp>)
1. **Steel Girders**
BLS PPI Index: 10170412 (Carbon plates)
Cost Basis: \$ 0.42 pound
 2. **Concrete Reinforcing Rebar**
BLS PPI Index: 10170425 (Concrete reinforcing bars, carbon)
Cost Basis: \$ 0.23 pound
 3. **Steel Piling**
BLS PPI Index: WPU10170611 (Standard pipe, carbon)
Cost Basis: \$0.30 pound
- D. **Frequency of Price Adjustment:**
- Price adjustments will be made for any and all months when, and only when, the Monthly Index (MI) differs by 5.00 % or more from the Benchmark Index (BI), for any one of the Indexed Items. The price adjustment will only be applied to those indexed items which meet the 5.00% threshold.

Determine the percent change in any given month as follows:

UTAH DEPARTMENT OF TRANSPORTATION - SR 201 DESIGN-BUILD

$$\%Change = \left(\frac{MI - BI}{BI} \right) \times 100$$

Where:

MI = Monthly Index from BLS PPI as specified

BI = Benchmark Index from BLS PPI (Feb 2004) as specified

E. Quantity of material eligible for price adjustment:

The Price Adjustment is applied to quantities shipped during month(s) when a Monthly Index differs from the Benchmark Index by 5.00% or more. Only consider the quantity of material for which the index meets the 5.00% threshold. For example, if in a particular month only 10170425 meets the 5.00% threshold, then only rebar will be adjusted for that month.

1. For items in the Steel Girders category, time of shipping is when the steel plate is shipped from the steel mill, before fabrication.
2. For items in the Steel Piling category, time of shipping is when the piling is shipped from the steel mill.
3. For items in the Concrete Reinforcing Rebar category, time of shipping is when the deformed bar is shipped from the mill, before coating and bending.

F. Determine the Monthly Index 4 months after initial publication to ensure that the data have not been revised. For example, to determine the MI for July 2004, wait until the November 2004 update is published by BLS and then use the data published for the month of July 2004.

G. Provision for Missing Data: If either the Benchmark Index or the Monthly Index is unavailable, use the "next higher-level series" for both the Benchmark Index and the Monthly Index.

1. For example, if 10170412 is not available for July 2004, use 101704 for July 2004 for the Monthly Index, and use 101704 for February 2004 for the Benchmark Index to determine any adjustment.
2. Refer to BLS Report 807, "Escalation and Producer Price Indexes: A Guide for Contracting Parties" on the web at <http://bls.gov/ppi/ppiesc.htm> for details on how to use the next higher-level series.

H. Determining Adjustments: The Design-Builder shall track the 3 Indexes on a monthly basis and submit a report to the Department every month throughout the life of the Contract summarizing activity from the start of the project to date. These reports will lag by 4 months because the data will not be considered validated until 4 months after publication by BLS.



CC MYERS INC.

09-Aug-2004

Document No.:215-STL.00018

State of California
Department of Transportation
333 Burma Road
Oakland, CA 94607

Temporary Bypass Structure
Contract No. 04-0120R4
CCM Job # 215

Attn: Mr. Kenneth Loncharich
Resident Engineer

Re: Potential Claim No. 1

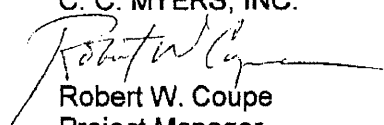
Dear Mr. Loncharich,

In your letter SL #51, you request that we provide you with a contractual basis to substantiate our request for an index to be established to provide price adjustments for the current fluctuating steel prices. This is not as simple as referencing an existing Standard Specification that addresses the situation, as none exist. This is a new and unusual situation that currently, is causing great hardship for the construction industry. We do not believe that it is the State's intention to cause hardship on their contractors. The situation with the steel market is beyond the control of either the State or the industry, not dissimilar to the situations that are addressed by Section 7-1.165 of the Standard Specifications. Here, the State provides relief for damages caused that are beyond either party's control. Another example of this is with the asphalt oil. The State accounts for the fluctuations in the oil prices with an index through a Contract Change Order. Neither party can control the index, but both parties can benefit from the presence of the index. This method has been utilized for years with much success on State projects and is an excellent example of how the steel price fluctuations should be handled.

Please also consider what benefit the State may realize by the establishment of an indexed adjustment. Projects that contain large amounts of steel that are bid when steel prices are high would benefit from the indexed method in that downward adjustments would be possible during the life of the project when prices subsided. A good example such a project is the Self Anchored Suspension Bridge project. The State would also benefit from the index at bid time, as contractors would not have to build in potential price increases that ended up never being realized. The State would benefit from the savings, rather than the contractor.

We therefore, again request that a Contract Change Order be written to provide a method to adjust the steel prices based on a mutually agreeable index.

Very truly yours,
C. C. MYERS, INC.

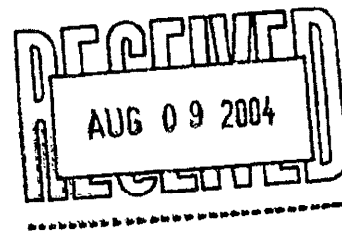

Robert W. Coupe
Project Manager

- 000793

cc: MO, DH
File: 215-101, 215-9901

~~49.00 62.01~~

05.04.01 / 62.02.01





C.C. MYERS, INC.

3286 FITZGERALD ROAD
RANCHO CORDOVA, CA 95742

An Equal Opportunity / Affirmative Action Employer
916-635-9370
FAX 916-635-8961

LETTER OF TRANSMITTAL

Document No:	215-STT.00014		
Dated	Jul 07 2004	Job No.:	215
Attention: Mr. Kenneth Loncharich			
Re: 04-0120R4			
SFOBB South Detour			

To: State of California
333 Berma Road
Oakland CA 94607

We are sending you:

☒ Attached

☐ Via Fax

- | | | |
|---------------------------------------|---|---|
| <input type="checkbox"/> Drawing | <input type="checkbox"/> Plans | <input type="checkbox"/> Prog. Pmt |
| <input type="checkbox"/> Samples | <input type="checkbox"/> Certificates of compliance | <input type="checkbox"/> Calculations |
| <input type="checkbox"/> Payroll | <input type="checkbox"/> Specs | <input type="checkbox"/> Copy of Letter |
| <input type="checkbox"/> Change Order | <input type="checkbox"/> Schedule | <input type="checkbox"/> Invoice |

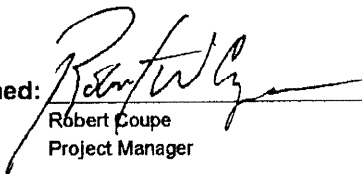
RECEIVED
JUL 07 2004

Copies	Item	Date	Description
1	01	Jul 07 2004	State Form CEM-6201B: Notice of Potential Claim No. 1

These are transmitted as checked below:

- | | | |
|--|---|--|
| <input type="checkbox"/> For Approval | <input type="checkbox"/> For Review/comment | <input type="checkbox"/> Return For Correction |
| <input checked="" type="checkbox"/> For Your Use | <input type="checkbox"/> As Requested | <input type="checkbox"/> For Information |

Remarks:

Signed: 
Robert Coupe
Project Manager

Copy To: MD

File: 215-101, 215-9901

000754

62.00

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
SUPPLEMENTAL NOTICE OF POTENTIAL CLAIM
CEM-6201B (NEW 9/2002)

FOR STATE USE ONLY	
Received By <i>W</i>	Date 7-7-04 (For resident engineer)

TO	CONTRACT NUMBER	DATE	IDENTIFICATION NUMBER
KEN LONCHARICH (resident engineer)	04-012024	7/7/04	1

This is a Supplemental Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

DATE: JUNE 8, 2004

The particular nature and circumstances of this potential claim are described in detail as follows:

SEE ATTACHMENT A

(attach additional sheets as needed)

The basis of this potential claim including all relevant contract provisions are listed as follows:

SEE ATTACHMENT B

(attach additional sheets as needed)

The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown of individual costs are attached hereto.

SEE ATTACHMENT C

(attach sheets as required)

A time impact analysis of the disputed disruption has been performed and is attached hereto. The affect on the scheduled project completion date is as follows:

SEE ATTACHMENT D

(attach time impact analysis as required)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

C.C. MYERS, INC.
SUBCONTRACTOR or CONTRACTOR
(Circle One)
[Signature]
(Authorized Representative)

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded by

PRIME CONTRACTOR

(Authorized Representative)

ADA Notice

For Individuals with sensory disabilities, this document is available in alternate formats. For information call (816) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

C. C. Myers, Inc.
July 7, 2004

Job #215: Temp. Bypass Structure
04-0120R4

Notice of Potential Claim No. 1

Attachment A

On June 8, 2004, we received State Letter 25, which was in response to our letter 215-STL.0002 with which we requested that the State issue a Contract Change Order to compensate us for the price escalations for the steel products required for the project. These escalations are being caused by the worldwide instability in the steel market. The State's letter denied the issuance of a change order and additional compensation. This market volatility is affecting many aspects of our project. We are experiencing increases in the cost of raw materials for all steel products, including piles, casings, structural steel, prestressing steel and reinforcing steel, to name a few. The structural steel influence also affects the procurement of our column forms and falsework/shoring material for the project. The lead time for procuring steel products is also increasing, which is causing delay. Delivery times of up to four months for steel raw materials are being experienced.

Subcontractors to C. C. Myers, Inc. that are incurring costs associated with this matter and are herewith submitting notices of potential claim include AVAR Construction Systems, Inc., Harris Salinas Rebar, Inc., Danny's Construction Company, Inc., Condon-Johnson & Associates, Inc. and Pacific Mechanical Corporation.

C. C. Myers, Inc.
July 7, 2004

Job #215: Temp. Bypass Structure
04-0120R4

Notice of Potential Claim No. 1

Attachment B

This is an industry wide problem and not specific to this project. It is worldwide and beyond our control. The continually changing conditions in the steel market are unpredictable and unprecedented. The condition has created a *force majeure*.

The Utah Department of Transportation has recently adopted a program for protecting both themselves and their contractors from such volatile market conditions. They are establishing an index for determining price adjustments and are reimbursing their contractors for such radical price fluctuations. Other states recognize that this is a cardinal change and are following suit.

C. C. Myers, Inc.
July 7, 2004

Job #215: Temp. Bypass Structure
04-0120R4

Notice of Potential Claim No. 1

Attachment C

The exact value and impact to the project cannot yet be determined. Every aspect of the project involving steel products is affected, such as reinforcing steel, structural steel, prestressing steel, steel pile, stay in place deck forms, CIDH pile casings, micropiles, tiedown piles, electrical conductors/components, water pipes, column forms, falsework and shoring material. We are experiencing both price increases and project delays due to this problem.

A summary of some of the costs that can be estimated are as follows:

CIDH permanent casings	\$50,000
Micropiling bar	\$37,000
Prestressing steel	\$43,000
Rebar	\$525,000
Pipe piling	\$45,000
Column forms	\$26,100
Structural steel	\$850,000

Notice of Potential Claim No. 1

Attachment D

The lead time for procuring steel products is increasing, which is causing delay. Delivery times of up to four months for steel raw materials are being experienced. Additionally, the delivery dates are not being met by the suppliers/fabricators thus adding another layer of difficulty in scheduling and avenue for delay.

Examples of steel orders that have experienced delay thus far are as follows:

The steel pipe piles for the project were ordered in January with an anticipated delivery in April. To date, we have not received delivery of this material. It is currently anticipated that the delivery will take place in early August. If this is the case, the delay to the project will be minimal due to the project suspension under Contract Change Order No. 14.

The steel casings for the CIDH piles were ordered in mid June with an expected delivery of early October. This is longer than originally anticipated. Any actual delay to the project due to the late delivery of these casings will have to be determined once the delivery takes place.

Structural steel orders are taking four months to reach the fabrication facility in China.

Due to the uncertainty of the dates of delivery, in each case, any actual delay suffered by the project can only be determined once the delivery actually takes place. Time Impact Analyses will be performed at those times to determine the impact to the project for each delivery,



C.C. MYERS, INC.

3286 FITZGERALD ROAD
RANCHO CORDOVA, CA 95742

An Equal Opportunity / Affirmative Action Employer
916-635-9370
FAX 916-635-8961

LETTER OF TRANSMITTAL

Document No:	215-STT.00012		
Dated	Jun 22 2004	Job No.:	215
Attention: Mr. Kenneth Loncharich			
Re: 04-0120R4			
SFOBB South Detour			

To: State of California
333 Berma Road
Oakland CA 94607

We are sending you:

☒ Attached

☐ Via Fax

- | | | |
|---------------------------------------|---|---|
| <input type="checkbox"/> Drawing | <input type="checkbox"/> Plans | <input type="checkbox"/> Prog. Pmt |
| <input type="checkbox"/> Samples | <input type="checkbox"/> Certificates of compliance | <input type="checkbox"/> Calculations |
| <input type="checkbox"/> Payroll | <input type="checkbox"/> Specs | <input type="checkbox"/> Copy of Letter |
| <input type="checkbox"/> Change Order | <input type="checkbox"/> Schedule | <input type="checkbox"/> Invoice |

Copies	Item	Date	Description
1	01	Jun 22 2004	Notice of Potential Claim No. 1

These are transmitted as checked below:

- | | | |
|--|---|--|
| <input type="checkbox"/> For Approval | <input type="checkbox"/> For Review/comment | <input type="checkbox"/> Return For Correction |
| <input checked="" type="checkbox"/> For Your Use | <input type="checkbox"/> As Requested | <input type="checkbox"/> For Information |

Remarks:

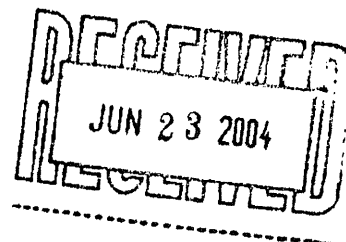
Signed: _____

Robert Coupe
Project Manager

Copy To: MC, BK, DA

File: 215-101, 215-9901


000755



Page 1 of 1

62.00

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
NOTICE OF POTENTIAL CLAIM
CEM-6201A (NEW 9/2002)

FOR STATE USE ONLY		
Received by:	 (For Resident Engineer)	Date: 6/23/04

To Kenneth Loncharich (resident engineer)	CONTRACT NUMBER 04-0120R4	DATE June 22, 2004	IDENTIFICATION NUMBER 1
--	-------------------------------------	------------------------------	-----------------------------------

This is an Initial Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04 "Notice of Potential Claim" of the Standard Specifications. The act of the Engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

DATE: June 8, 2004

The particular nature and circumstances of this potential claim are described as follows:

On June 8, 2004, we received State Letter 25, which was in response to our letter 215-STL.0002 with which we requested that the State issue a Contract Change Order to compensate us for the price escalations for the steel products required for the project. These escalations are being caused by the worldwide instability in the steel market. The State's letter denied the issuance of a change order and additional compensation. This market volatility is affecting many aspects of our project. We are experiencing increases in the cost of raw materials for all steel products, including piles, casings, structural steel, prestressing steel and reinforcing steel, to name a few. The structural steel influence also affects the procurement of our column forms and falsework/shoring material for the project.

The lead time for procuring steel products is also increasing, which is causing delay. Delivery times of up to four months for steel raw materials are being experienced.

This is an industry wide problem and not specific to this project. It is worldwide and beyond our control. The continually changing conditions in the steel market are unpredictable and unprecedented. The Utah Department of Transportation has recently adopted a program for protecting both themselves and their contractors from such volatile market conditions. They are establishing an index for determining price adjustments and are reimbursing their contractors for such radical price fluctuations. Other states are following suit.

The exact value and impact to the project cannot yet be determined. Every aspect of the project involving steel products is affected, such as reinforcing steel, structural steel, prestressing steel, steel pile, CIDH pile casings, micropiles, tiedown piles, electrical conductors/components, water pipes, column forms, falsework and shoring material. We are experiencing both price increases and project delays due to this problem.

Subcontractors to C. C. Myers, Inc. that are incurring costs associated with this matter and are herewith submitting notices of potential claim include AVAR Construction Systems, Inc., Harris Salinas Rebar, Inc., Condon-Johnson & Associates, Inc. and Pacific Mechanical Corporation.

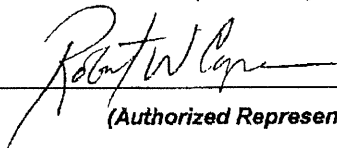
(attach additional sheets as needed)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code Sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

C. C. Myers, Inc.

SUBCONTRACTOR or CONTRACTOR

(Circle One)


(Authorized Representative)

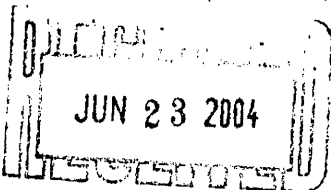
For subcontractor notice of potential claim

This notice of potential claim is acknowledged and forwarded by

PRIME CONTRACTOR

(Authorized Representative)

215-STL.00012



ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814

AVAR

Fax Transmittal

AVAR Construction Systems, Inc.
Campbell, CA 95008
Tel. 408.370.2100
Fax: 408.370.2329

To: C.C. Myers, Inc.
Attn: Bob Coupe
Fax No: 916/635-8961
From: Rene
Re: Contract No. 04-0120R4
Date: June 21, 2004
Pages: 2 (including cover sheet)

RECEIVED

JUN 21 2004

CC MYERS, INC.
JOB 215 TEMP BYPASS STRUCTURE

FL-00275

215-211

215-9901

STATE

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
INITIAL NOTICE OF POTENTIAL CLAIM
CEM-6201A (NEW 9/2002)

FOR STATE USE ONLY	
Received By	Date
<i>[Signature]</i>	6/23/04
For Resident Engineer	

TO Kenneth Loncharich (resident engineer)	CONTRACT NUMBER 04-0120R4	DATE June 21, 2004	IDENTIFICATION NUMBER 1
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This is an Initial Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

DATE:

The particular nature and circumstances of this potential claim are described as follows:

On December 2, 2003 we submitted a quotation to C.C. Myers, Inc. for the supply and installation of post-tensioning for various bents and columns. Our proposal was valid for acceptance within 60 days. Subsequent to that period we were asked to extend that period by another 60 days. We agreed to do so for another 60 days but were required to increase our price accordingly. Total increase of our cost at that date was \$30,000.00. Our revised quotation to C.C. Myers, Inc. was increased by \$20,000.00 while we absorbed the remaining \$10,000.00.

Since that date the cost of prestressing steel and other items (e.g. anchor castings, duct, H.S. bars) increase by another \$10,000.00. If prestressing steel and anchorages can be purchased and paid for at this time, additional escalation of material cost would be minimal.

If materials cannot be paid for as Material on Hand, total increase of claim will have to be the difference in price when the materials are installed.

(attach additional sheets as needed)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

AVAR Construction Systems, Inc..

SUBCONTRACTOR or CONTRACTOR
(Circle One)Trudi Friedrich *T. Friedrich*

(Authorized Representative)

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded by

C.C. MYERS, INC.

PRIME CONTRACTOR

[Signature]
(Authorized Representative)

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-88, Sacramento, CA 95814.



RECEIVED

June 22, 2004

JUN 22 2004

C.C. Myers, Inc
3286 Fitzgerald Road
Rancho Cordova, CA
95742

CC MYERS, INC.
JOB 215 TEMP BYPASS STRUCTURE

IC-00276
ZIS-209
215-9901
STATE

Attn. Mr. Robert Coupe

Reference: Yerba Buena Temporary Bypass Structure -- Project #04-0120R4
Steel, Raw Material Market Conditions

Dear Robert,


This is to confirm that we intend on filing a claim for compensation for the steep reinforcing price increases experienced immediately after bid and during the current start date delay of the project. Please find attached form CEM-6201A with initial information of claim. All costs will be submitted once they can be determined after a project schedule is approved.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Lyle Sieg'.

Lyle Sieg, PE
Vice President

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
NOTICE OF POTENTIAL CLAIM
CEM-6201A (NEW 9/2002)

FOR STATE USE ONLY		
Received by:		Date: 6/23/04
(For Resident Engineer)		

To Mr. Kenneth Loncharich (resident engineer)	CONTRACT NUMBER #04-0120R4 Yerba Buena Temp. Bypass	DATE June 22, 2004	IDENTIFICATION NUMBER
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This is an Initial Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04 "Notice of Potential Claim" of the Standard Specifications. The act of the Engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

DATE: June 22, 2004

The particular nature and circumstances of this potential claim are described as follows:

On June 4, 2004 Mr. Ken Loncharich issued a letter SL#00025 to CC Myers stating that a change order would not be issued to establish an indexed adjustment for steel raw material. Harris Salinas Rebar confirms that the price for reinforcing steel for this project has escalated beyond a reasonable or predictable level for reasons as described by Mr. Coupe's letter 215-STL.00002 and therefore we wish to seek additional compensation.

Further to the mere price escalation of reinforcing materials, the current project delay directed by Caltrans has further negatively impacted our ability to purchase reinforcing steel for this project.

We originally estimated in December of 2003 that the total tonnage of the project would be 3,745.5 tons at an average material cost of \$374/ton with an additional \$40/ton escalation for work in 2005, the current price has escalated to approx. \$545/ton at the time of this request. We would therefore seek approximately $\$545 - 374 - 40 = \$131 \times 3745.5 \text{ tons} = \$490,660$, this may vary dependent upon the price of material when the work is executed.

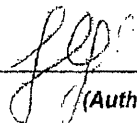
(attach additional sheets as needed)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code Sections 12850-12855. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

HARRIS SALINAS REBAR, INC

SUBCONTRACTOR or CONTRACTOR

(Circle One)


L. SILES
(Authorized Representative)

For subcontractor notice of potential claim

This notice of potential claim is knowledgeable and forwarded by

C.C. MYERS INC

PRIME CONTRACTOR


(Authorized Representative)

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CONDON - JOHNSON
& ASSOCIATES, INC.
CONTRACTORS AND ENGINEERS

RECEIVED

JUN 22 2004

June 22, 2004

CC Myers, Inc.
3286 Fitzgerald Road
Rancho Cordova, CA 95742
Attn.: Robert W. Coupe

CC MYERS, INC.
JOB 215 TEMP BYPASS STRUCTURE

IC-00279
ZIS-208
ZIS-9901
STATE

Re: Temporary Bypass Structure, Contract No. 04-0120R4; CCM Job# 215

Subj.: Notice of Potential Claim No. 1 – Steel Raw Material Market Conditions

Dear Mr. Coupe,

Attached, is CJA "Notice of Potential Claim" dated June 22, 2004.

Sincerely,


Raymond A. Fassett
Project Manager

Cc: M. Morrison, CJA

CLARENCE EMERSON - SUNDAY - 0-100000

1840 EMBARCADERO, (94606), P.O. BOX 12368, OAKLAND, CA 94604 • TEL: (510) 534-3400 • FAX: (510) 534-3421
1801-A SOUTH SANTA FE AVE., COMPTON, CA 90221 • TEL: (310) 886-0011 • FAX: (310) 886-0631
651 STRANDER BLVD., SUITE 110, TUKWILA, WA 98188 • TEL: (206) 675-8248 • FAX: (206) 575-8354
9303 CHESAPEAKE DR., SUITE B, SAN DIEGO, CA 92123 • TEL: (858) 503-7890 • FAX: (858) 503-7895

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
NOTICE OF POTENTIAL CLAIM
CEM-6201A (NEW 9/2002)

FOR STATE USE ONLY		
Received by:		Date: 6/23/04
(For Resident Engineer)		

To Ken Loncharich (resident engineer)	CONTRACT NUMBER 04-0120R4	DATE 6/22/04	IDENTIFICATION NUMBER 1
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This is an Initial Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04 "Notice of Potential Claim" of the Standard Specifications. The act of the Engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

DATE: 6/8/04

The particular nature and circumstances of this potential claim are described as follows:

Failure of the Engineer to allow additional compensation due to changing market conditions in the steel industry

Steel prices for CIDH steel casing and micropiling reinforcing bar have increased since the December 2, 2003 bid date. These increases are due to unstable and unpredictable influences outside of the industry control. Attached, are the additional estimated cost for steel casing and micropiling reinforcing bar at today's market prices. The actual additional compensation request cannot be determined until placement of order.

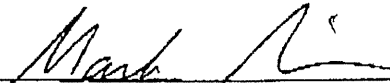
(attach additional sheets as needed)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code Sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

Condon-Johnson & Associates, Inc.

SUBCONTRACTOR or CONTRACTOR

(Circle One)



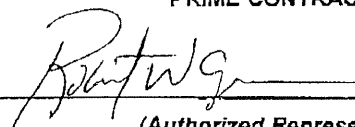
(Authorized Representative)

For subcontractor notice of potential claim

This notice of potential claim is acknowledged and forwarded by

CC MYERS INC

PRIME CONTRACTOR



(Authorized Representative)

CONDON-JOHNSON & ASSOCIATES, INC.
Contractors & Engineers
P.O. BOX 12368
OAKLAND, CA 94604
(510) 534-3400 FAX (510) 534-3421

JOB Contract No. 04-0120 R4
SHEET NO. _____ OF _____
CALCULATED BY _____ DATE _____
CHECKED BY _____ DATE 6/22/04
SCALE M. MORRISON

App'l by NW

CIDH CASING

Steel Increases:

Nov. 23, 2003 Oregon Steel Mills $\$21.25/\text{cwt}$

Today " " " $\$43.50/\text{cwt}$

Increase = $\$22.25/\text{cwt}$

Weight = 191,756 #

Total Increased # = $\$43,145$

Steel Casings Weight

111.33' 4 p.c.s. 150" O.D. x .75 wall x 27'-10"

$1,178\#/\text{LF} \times 111.33' = 131,091\#$

92' 4 p.c.s. 84" O.D. x .75 wall x 23'-0"

$660\#/\text{LF} \times 92' = 60,665\#$

Total weight 191,756 #

Steel Quantities from App'l by NW available upon request.

CONDON-JOHNSON & ASSOCIATES, INC.
Contractors & Engineers
P.O. BOX 12368
OAKLAND, CA 94604
(510) 534-3400 FAX (510) 534-3421

JOB Contract No. - 04-012024
SHEET NO. _____ OF _____
CALCULATED BY _____ DATE _____
CHECKED BY _____ DATE _____
SCALE M. Morris 6/22/04

Micropiling Reinforcing BAR

63 mm BAR

6,817 m

weight = 24.86 kg/m

169,471 kg - raw material

372,855# = 186 TN

December, 03 374 TN

June, 04 545 TN

DIFF. 171 TN

\$ 31,877

Bob Coupe

RECEIVED

From: Maria Guadamuz [mguadamuz@pmcorporation.com]

JUN 22 2004

Sent: Tuesday, June 22, 2004 3:02 PM

To: bcoupe@ccmyers.com

CC MYERS, INC.
JOB 215 TEMP BYPASS STRUCTURE

Cc: Pierre Bigras

Subject: CC Mayers Job #215 TBS: Potential Claim Form

PC-00284
215-214
215-9901

Attached please find Notice of Potential Claim No. 1 for your use and information. Should you have any questions please contact Pierre Bigras at 925-827-4940.

STATE

Maria Guadamuz

Pacific Mechanical Corporation

P.O. Box 4041


Concord, CA 94524

Phone: 925-827-4940, Ext. 143

Fax: 925-827-0519

6/22/2004

STATE OF CALIFORNIA- DEPARTMENT OF TRANSPORTATION
NOTICE OF POTENTIAL CLAIM
CEM-6201A (NEW 9/2002)

FOR STATE USE ONLY		
Received by:		Date: 6/23/04
(For Resident Engineer)		

To Kenneth Loncharich (resident engineer)	CONTRACT NUMBER 04-0120R4	DATE 22 June, 2004	IDENTIFICATION NUMBER 1
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This is an Initial Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04 "Notice of Potential Claim" of the Standard Specifications. The act of the Engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on: 8

DATE: 22 June, 2004

The particular nature and circumstances of this potential claim are described as follows:

Pacific Mechanical Corporation (PMC) intends to request compensation for the additional steel costs that were incurred on this project. As you know, because of circumstances well beyond the control of PMC, CC Myers or CALTRANS, the carbon steel prices have escalated beyond 54% during the last year. This was totally unforeseeable and uncontrollable.

As a result, we incurred significantly higher steel pipe costs than we estimated at bid time. This cost increase is of such proportion that it consists in our view "*force majeure*" and could put PMC in an "*impossibility of performance*". We are presently evaluating the exact amount of this cost impact and will be presenting a documented request for the *cost only* portion of the increase.


We trust that you will concur that this increase does in fact consist of a "*force majeure*" and compensate PMC to the extent permitted by the California Public Contract Code.

(attach additional sheets as needed)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code Sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

SUBCONTRACTOR or CONTRACTOR

(Circle One)



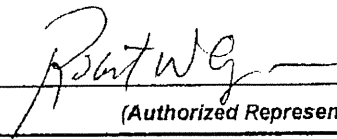
(Authorized Representative)

For subcontractor notice of potential claim

This notice of potential claim is known and forwarded by

CC MYERS INC

PRIME CONTRACTOR



(Authorized Representative)

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DEPARTMENT OF TRANSPORTATION

333 BURMA ROAD
OAKLAND, CA 94607-1015
PHONE (510) 622-5660
FAX (510) 286-0550



*Flex your power!
Be energy efficient!*

June 4, 2004
Contract No.04-0120R4
04-SF-80-12.6/13.2
Temporary Bypass Structure
SL# 00025

Mr. Robert W. Coupe
C. C. MYERS, INC.
3286 Fitzgerald Road
Rancho Cordova, CA 95742

Subject: Steel Raw Market Conditions
Reference: CCM Doc. No.: 215-STL.00002

Dear Mr. Coupe:

This letter is in response to your letter dated April 7, 2004 in regards to your request for a contract change order to allow for an adjustment of compensation due to changing conditions in the steel industry. A contract change order will not be issued to establish an indexed adjustment for steel raw material.

If you have any comments or questions, please contact me at (510) 622-5660.

Sincerely,

Kenneth Loncharich
Resident Engineer

DEPARTMENT OF TRANSPORTATION

333 BURMA ROAD
OAKLAND, CA 94607-1015
PHONE (510) 622-5660
FAX (510) 286-0550



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July 26, 2004
Contract No.04-0120R4
04-SF-80-12.6/13.2
Temporary Bypass Structure
SL# 00051

Mr. Robert W. Coupe
C. C. MYERS, INC.
3286 Fitzgerald Road
Rancho Cordova, CA 95742

Subject: NOPC No. 1

Reference: CCM Doc. Nos.: 215-STL.00002, 215-STT.00024, and 215-STT.00014

Dear Mr. Coupe:

We have received your Notice of Potential Claim (NOPC) #1 submittal, dated 7/7/04, concerning our denial of your request for adjustment of steel prices. Additional information is needed prior to making a determination of merit.

The Department's denial of the initial request for a change order was based on a lack of a contractual basis for the request. The NOPC likewise does not contain any contractual basis to support a change to the contract for adjustment of steel prices. Please provide the contractual basis (i.e. contract specification) which supports your entitlement to additional compensation as outlined in the NOPC.

Please provide this information within 15 days of receipt of this letter.

If you have any comments or questions, please contact me at (510) 622-5660.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Loncharich".

Kenneth Loncharich
Resident Engineer

DEPARTMENT OF TRANSPORTATION

333 BURMA ROAD
OAKLAND, CA 94607-1015
PHONE (510) 622-5660
AX (510) 286-0550



*Flex your power!
Be energy efficient!*

August 27, 2004
Contract No. 04-0120R4
04-SF-80-12.6/13.2
Temporary Bypass Structure
SL# 86

Mr. Robert W. Coupe
C. C. MYERS, INC.
51 Macalla Road
San Francisco, CA 94130

RE: 215-STL.00018
Subject: Potential Claim No. 1

Dear Mr. Coupe:

This letter is in response to letter dated August 9, 2004 regarding additional information that was requested for NOPC #1. You state that while there is no contract specification that addresses this issue, it is similar to situations addressed by Section 7-1.165 of the Standard Specifications because it is beyond the control of either party.

Establishment of an index for raw steel after the contract has bid is outside the scope of the contract. Section 9-1.02 of the Standard Specifications assigns all risk to the contractor connected to the prosecution of the work. Establishing an index after the contract has bid would relieve you of risk assigned by the contract. This would be unfair to the other bidders who have taken on this risk and may be the reason you were the low bidder and ultimately awarded the contract.

Therefore, I find no merit to your request for additional compensation and a raw steel index will not be established.

If you wish to pursue this matter, you must reply within 15 days of receipt of this letter, stating clearly and in detail the basis of your objection to my determination, and refer this issue to the Dispute Review Board (DRB) within 21 days of receipt of this letter.

If you have any questions, please contact me at (510) 622-5660.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Loncharich", written over a horizontal line.

Kenneth Loncharich
Resident Engineer

cc: File 5.03, 62.01

"Caltrans improves mobility across California"